***HON'BLE SRI JUSTICE P.S. NARAYANA**

\+ WRIT PETITION NOs.10055, 10136, 10137, 10223 and 10274 of 2006

%13-12-2006

WP No.10055/2006

Between:

#P.Raghu Kumar. .. PETITIONER

versus

$Special Officer, Municipality Bhadrachalam, Khammam District and three others. .. RESPONDENTS

WP No.10136/2006

Between:

#K.Vijaya. .. PETITIONER

versus

$Special Officer, Municipality Bhadrachalam, Khammam District and three others. .. RESPONDENTS

WP No.10137/2006

Between:

#Vasa Padmavathi. .. PETITIONER

versus

$Special Officer, Municipality Bhadrachalam, Khammam District and three others. .. RESPONDENTS

WP No.10223/2006

Between:

#Nooka Balaram. .. PETITIONER

versus

$Special Officer, Municipality Bhadrachalam, Khammam District and three others. .. RESPONDENTS

WP No.10223/2006

Between:

#Syed Abdul Aziz. .. PETITIONER

versus

$Special Officer, Municipality Bhadrachalam,
Khammam District and two others. .. RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioners
in all the Writ Petitions**:** Sri M.Rajamalla Reddy

^Standing Counsel for Respondents 1 and 2
in all the Writ Petitions: Sri Polisetty Radha Krishna

^Counsel for Respondent No.4 in
WPs.10055, 10136, 10137 and
10223 of 2004: Sri Kowturu Vinaya Kumar.

? Cases referred

1. AIR 1985 S.C. 613.
2. 2006(5) ALD 255.
3. 2005(4) ALT 252.
4. 2005(5) ALD 101.

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COMMON ORDER:

All these Writ Petitions are coming up for admission today. Notice Before Admission had been ordered and status quo for a limited period was granted, which is being extended from time to time. In Writ Petition Nos.10055, 10136, 10137, 10223 of 2006, 4th respondent came on record on the ground that at his instance and on his representation only, the present impugned action had been initiated and hence he must also be given opportunity of hearing in these Writ Petitions before passing an order. It is stated that in Writ Petition No.10274 of 2006 also the facts are similar and in fact the implead application and vacate application were already moved, and further submissions are made that inasmuch as the facts are similar, the said Writ Petition also can be disposed of.

2. These Writ Petitions are filed for a Writ of Mandamus declaring the respective notices dated 3.5.2006 issued by the 1st respondent as arbitrary, unreasonable, illegal and violative of principles of natural justice, violative of provisions of A.P. Municipalities Act and also violative of Articles 14, 19, 21 and 300-A of the Constitution of India and further issue such other suitable directions.

3. The facts are almost similar in all these Writ Petitions and the averments made even in the respective counter affidavits appear to be almost similar. At the outset it may be stated that the notices impugned dated 3.5.2005 are styled as encroachment notices under Section 192 of A.P. Municipalities Act, wherein it was specified “if the

encroachment is not removed by you within (7) days, the same will be got removed by this Department under Section 360 of the above said Act without giving you any further notice and the expenses incurred for removal will be recovered from you under the provisions of the Act". It is stated by the respective writ petitioners in these writ petitions that they have been in possession and enjoyment of the sites from about the year 1970 and before the present constructions, there used to be temporary constructions in the said site and in the year 1977 the then Gram Panchayat, Bhadrachalam, allotted the site in favour of the respective writ petitioners. It is also stated that in 1977, the Gram Panchayat, Bhadrachalam, allotted similar adjoining sites to nearly 70 petty vendors along with these writ petitioners in Nehru Market, Bhadrachalam, for the purpose of their livelihood, and ever since that date these writ petitioners are doing business and eking out their livelihood. The then Gram Panchayat also collected encroachment tax from these writ petitioners and this record will be with the Bhadrachalam Municipality at present. It is also stated that in the year 2000, the then Sub-Collector, Bhadrachalam, who was Special Officer of Bhadrachalam Municipality, Smt. Neetu Prasad, I.A.S. got laid a cement road in front of their shops by making each of them to leave 5' width of land in front of the shops for the said cement roads. The said cement road was laid by collecting donations from these writ petitioners and also the other shop owners similarly placed. After the said road was laid, the Municipality treated the constructions as regular constructions and house tax was levied by giving assessment numbers to the respective shops from the year 2001-02 onwards and several averments were made in relation to the payment of tax, the assessments made, giving of assessment numbers and some relevant material in relation thereto, the tax receipts etc., had been placed before this Court. Several factual details also had been narrated in paragraphs 5 to11 of the affidavit filed in support of the respective Writ

Petitions.

4. The 4th respondent-proposed party, who came on record on the ground that at his instance only the action had been initiated and also the Special Officer, Bhadrachalam Municipality, Khammam District, filed Vacate Applications praying for vacating of the interim order of status quo granted by this Court in these Writ Petitions.

5. The 4th respondent-proposed party who came on record, viz., Yejju Ramakrishna Vittal alias Rambabu, in the elaborate counter affidavit narrated several factual details. Specific stand is taken that due to these encroachments by the respective writ petitioners and also some other persons on the road margin, the site in question, northern site as well as eastern site and the passage to his site, are being totally closed and hence the 4th respondent is unable to utilize the said site. The 4th respondent also had narrated several other factual details. It is needless to say that the main controversy is in between the writ petitioners and the 1st respondent-Special Officer, Bhadrachalam Municipality.

6. In the counter affidavit filed on behalf of respondents 1 and 2 specific stand is taken that these writ petitioners are neither the owners nor the possessors of the respective shops. Further, the stand taken by the writ petitioners that they have been in possession of the property from 1970 by raising temporary constructions and in the year 1977 the Gram Panchayat, Bhadrachalam, allotted the said site in their favour and similar other sites also allotted to 70 similar petty vendors, these aspects were specifically denied. Further specific stand is taken that these petitioners had not filed any document to establish the said fact. Further it is stated that Bhadrachalam is within the Scheduled Area of Khammam District and the provisions of A.P. Scheduled Areas Land Transfer Regulation 1/1970 are applicable and according to the said Regulation, these petitioners being non-tribals, they have no

locus standi to acquire any immovable property including the alleged shops and neither the

Gram Panchayat nor the Government are vested with any power to allot or assign any immovable property to any non-tribal. Several other factual details that with the donations of these writ petitioners, the cement road was laid and that these shops are assessed, also had been denied. Further, the Municipality had taken a specific stand that it is true that the Municipality had issued the impugned notices dated 3.5.2006 to these petitioners requiring them to remove the encroachments within 7 days from the date of service of the notices, failing which encroachments would be removed under Section 360 of A.P. Municipalities Act and these notices were issued while exercising the powers strictly adhering to the provisions of Section 192 of A.P. Municipalities Act. Further, relating to the 4th respondent-proposed party, who came on record, a specific stand is taken that the said 4th respondent issued a legal notice dated 2.2.2006 through his counsel to the Municipality demanding for eviction of the encroachments on the road margin in front of his site on the northern side as well as on the eastern side. Further stand is also taken that it is not correct to state that on the strength of the said notice only, the action had been initiated, but it is averred that the District Collector, Khammam, vide his letter dated 22.2.2006 in Rc.No.LC4/378/2006 instructed respondents 1 to 3 to take proper action and the Mandal Revenue Officer, Bhadrachalam also was instructed to submit a detailed report in the matter, and accordingly the Mandal Revenue Officer, Bhadrachalam, submitted a report dated 28.3.2006 in Rc.No.C/546/2006 affirming that these petitioners and certain others had encroached the road margin adjacent to the site of the present proposed party-the 4th respondent in these Writ Petitions. In anticipation of the action which may be taken, it is stated, these Writ Petitions had been thought of. Further specific

stand is taken that after referring to Sections 172(2) 174 and 192 of A.P. Municipalities Act, the encroachers of this nature are not entitled to any prior notice and inasmuch as there is no acceptable material available either with the petitioners or on the records of the Municipality, the writ petitioners are not entitled to any prior notice at all. It is also brought to the notice of this Court that the writ petitioner in Writ Petition No.10055 of 2006 had approached this Court by filing Writ Petition No.6607 of 2006 and this Court by order dated 4.4.2006 disposed of the said Writ Petition observing as hereunder:

> "Having regard to the facts and circumstances of the case, the respondents are directed not to demolish or take away any portion of the property of the petitioner and not to dispossess him without following due process of law under Section 172(2) or 174 of the Act or by private negotiations or by initiating the provisions under Land Acquisition Act".

7. Sri Raja Malla Redydy, learned counsel representing the writ petitioners would submit that in the light of the tax receipts and the assessments specified in the relevant tax receipts produced before this Court, the respective writ petitioners cannot be equated with the encroachers and such parties in whose favour such assessments were made and house tax in fact had been collected to be put on notice by affording property opportunity to explain their stand and then pass appropriate orders. The learned counsel placed strong reliance on the decision of the Apex Court in M/s. BABUBHAI & CO. AND OTHERS vs. STATE OF GUJARAT AND OTHERS[1] and also the decision of this Court in KASWA VENKATESHAM AND OTHERS vs. STATE OF A.P. AND OTHERS[2].

8. Sri Polisetty Radhakrishna, learned Standing Counsel representing the respondents 1 and 2 would maintain that it is the duty and also the statutory obligation of the Municipality, the local body, to see that the encroachments in the road margin are removed and it is

true that some representation was made in this regard by the 4th respondent, but inasmuch as the records of the Municipality would not show that the erstwhile Gram Panchayat had given any permission whatsoever at any point of time to these writ petitioners, the writ petitioners are just encroachers and hence the impugned notices had been issued and the said notices are in accordance with law. The learned counsel placed reliance on the decisions in YASEEN KHATOON vs. COMMISSIONER, MUNICIPAL CORPORATION OF HYDERABAD AND ANOTHER[3] and YELUGULA SUBBA RAO vs. PERUMALLA SRI RAMAKRISHNA MURTHY[4]. The learned Standing Counsel also would further submit that inasmuch it is not in serious controversy that this area falls within the agency area, these non-tribals and private parties cannot own any property whatsoever and in the light of this clear legal position, it would be a futile exercise to give opportunity to the writ petitioners to submit their explanations in this regard.

9. On a careful reading of the respective notices impugned in these Writ Petitions and also the tax receipts produced before this Court specifying the assessment numbers, it is not clear whether initially the encroachments were made and subsequently they had been regularized by according permission or otherwise. However, the present Municipality had taken a specific stand that such records are not available even in the records of the erstwhile Gram Panchayat. Be that as it may, it is pertinent to note that as the tax receipts are produced before this Court showing the assessment numbers, this Court is not inclined to express any further opinion whether in such cases, the petitioners would be placed on a better footing than the ordinary encroachers or they are to be treated as just encroachers in the light of the specific stand taken by the 1st respondent-Municipality. Reliance was placed on *M/s. Babubhai & Co.,* case (1 supra), wherein

the Apex Court at paragraphs 4 and 8 observed as hereunder:

> "The High Court has negatived both the grounds of challenge. As regards ground (a), relying upon the decision in Wolver-hampton New Water Works case reported in (1859) 6 C.B. (N.S.) 336 and observations of Willes J. therein (appearing at page 356 of the Report) the High Court took the view that the rights of the local authority (to own and obtain possession of such lands) with the corresponding liability of the occupants to suffer eviction therefrom did not exist under the law prior to the making of the Final Scheme, that such rights and liabilities were created for the first time by the Final Scheme which is to be read as part of the Act and since the Act while creating these new rights and liabilities provided for a special and particular remedy for enforcing them under S.54 the remedy of summary eviction must be held to be an exclusive remedy and the liability to eviction arising under S.53(a) or (b) cannot be enforced by the ordinary remedy of a suit; in other words, the remedy of summary eviction under S.54 having been held to be an exclusive remedy the entire ground of challenge disappeared. As regards ground (b) the High Court took the view that S.54 conferred upon the local authority a quasi-judicial power and not administrative power and as such it was bound, in conformity with the principles of natural justice, to give an opportunity of hearing to the occupants before taking the threatened action of summary eviction and therefore no question of section being bad in law arose; as regards Rule 27 the High Court held that since the said Rule did not contain any express exclusion of such hearing and since S.54 impliedly required the observance of principles of natural justice on the part of the local authority while exercising the power of summary eviction, the said requirement must also be read in Rule 27 and so read the Rule could not be regarded as ultra vires the section. The High Court also proceeded to indicate in what ways such hearing could be afforded by the local authority while acting under the said Rule. This is how the High Court upheld the constitutional validity of S.54 of the Act and

Rule 27 of the Rules.

> In the instant case on an examination of the Scheme of the Act as also the purpose sought to be achieved by S.54 it will appear clear that the topic of making of town planning schemes is dealt with in Ss.21 to 53 while S.54 (and some of the following sections like 55 and 71 to 78) deal with the aspect of the execution of town planning schemes and it is at the stage of execution of a town planning scheme that the power of summary eviction of occupants who have ceased to be entitled to occupy the plots in their occupation has been conferred upon the Local Authority itself – a highly responsible body, and that the power is required to be exercised by it in objective manner (it is to be found by reference to the Final Scheme and its interpretation whether the occupants are occupying lands which they are not entitled to occupy). Further we are in agreement with the High Court that the power conferred upon the Local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record eschewing matter extraneous and irrelevant. Moreover any order of summary eviction based on any extraneous, non-germane, irrelevant or mala fide considerations would be subject to the writ jurisdiction of Court. Having regard to these aspects, mere absence of corrective machinery by way of appeal or review would not in our view render the provision invalid".

It is no doubt true that on facts the said decision of the Apex Court is distinguishable.

10. Further reliance also was placed in *Kaswa Venkatesham and others* case (2 supra), wherein this Court while dealing with Section 192 of A.P. Municipalities Act, in relation to encroachments and

removal for road widening, it was held that the concept of principles of natural justice, if otherwise crystallized by statutory provisions or limitations are placed in relation thereto, the same may have to be taken into consideration. In that view of the submissions, submissions at length were advanced in relation to sub-section (2) of Section 192 of the Act. At the same time the broader concept of the principles of natural justice where an action involves the civil consequences also cannot be forgotten. It is made clear that this is not a case of encroachers simplicitor and there appears to be some dispute or controversy, which may have to be further gone into. It is no doubt true that as per Regulation 1 of 1970, the writ petitioners, if they are not non-tribals, cannot own such properties in an agency area, but, this aspect also may have to be further gone into.

11. Strong reliance was placed on the judgment in *Yelugula Subba Rao* case (4 supra), wherein the learned Judge of this Court while dealing with possessory rights observed that the said rights cannot be recognized in favour of the individuals who occupied or encroached into roads and road margins irrespective of the year in which structures were erected and such persons do not derive any right if it was on road margin.

12. Reliance also was placed on the judgment in *Yaseen Khatoon's* case (3 supra), which is in relation to the notices under Sections 636 and 437 of Hyderabad Municipal Corporation Act, 1955 and the demolition of unauthorized constructions, the benefit of the deemed permission and the other relevant aspects.

13. On an over all appreciation of the facts and circumstances, this Court is of the considered opinion that though a statutory duty or obligation is cast upon the local body-Municipality to see that the road margins and the encroachments are duly removed irrespective of the fact whether such complaint was made by the 4th respondent or not,

here is a case where the writ petitioners are asserting that the erstwhile Gram Panchayat had accorded some permission and the present Municipality, the successor of the erstwhile Gram Panchayat, no doubt taking a stand that such records are not available, an additional stand is taken that the writ petitioners cannot own any such properties at all in this area being non-tribals, all these questions are left upon. However, in the peculiar facts and circumstances, since straight away notices are issued for removal of the alleged encroachments in the light of the specific stand taken by the respective parties, this Court is of the considered opinion that these impugned notices to be treated as show cause notices and the writ petitioners are given two (02) weeks time from the date of receipt of a copy of this order to submit their explanations relating to these notices. It is needless to say that respondents 1 and 2, after receipt of such explanations and affording opportunity to both the writ petitioners and also the 4th respondent pass appropriate orders as expeditiously as possible preferably within a period of two (02) weeks thereafter. It is also needless to say that the observations made by this Court may not weigh with respondents in taking a decision in this regard and the same to be decided on the respective contentions of the parties and the material which may be placed before the respondents 1 and 2.

14. Accordingly the Writ Petitions are disposed of with the above directions. There shall be no order as to costs.

13.12.2006

SSR
LR COPY TO BE MARKED: YES/NO.

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[1] AIR 1985 S.C. 613.

[2] 2006(5) ALD 255.

[3] 2005(4) ALT 252.

[4] 2005(5) ALD 101.